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PACIFIC TELESIS
Group-Washington

September 29, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

DOCKET FILE COPY ORIGINAL

Re: *MM Docket No. 94-131-Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service; PP Docket No. 93-253-Implementation of Section 309(j) of the Communications Act-Competitive Bidding*

On behalf of Pacific Telesis Enterprise Group and Cross Country Wireless Inc., please find enclosed an original and six copies of two corrected pages to their *"Reply to Oppositions to Petition for Reconsideration"* that was filed yesterday in the above proceeding. The two pages were found to have typographical errors. Also included is a complete corrected copy of the entire document.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Enclosure

cc: Rudolfo M. Baca
Sharon Bertelsen
Charles Dziedzic
Barbara Kreisman
Evan Kwerel
Jonathan D. Levy
Renee Licht
Jane Mago
Mary P. McManus
John Nakahata
Maureen O'Connell
Jeanine Poltronieri
Gregory Rosston
Cathy Seidel
William Sharkey
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John R. Williams

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The areas of consensus support for the Commission's Report and Order are substantial and go to the core of the policies at issue in these proceedings. It is important also to note the substantial agreement among the filers on those few issues where there is disagreement with the Commission, e.g., opposition to the right-of-first-refusal requirement and support of the right of ITFS licensees/excess capacity lessees to enter into leases that are binding on assignees, to name two issues.[2/] While there are differences between the Commission and the affected industries and within the affected industries, the remarkable fact is that there is strong consensus that the Report and Order is on the right track. It generally establishes a proper framework for wireless cable as it moves into a new era of enhanced service (both entertainment and educational), increased competitiveness and technological sophistication.

The single issue that PTE and Cross Country here address is their proposal, supported by A/B Financial, Inc., for revising the definition of small businesses to take into account the dramatic difference between the capital infrastructure costs for the MDS and broadband PCS services. Use of the same $40 million annual revenue test for the MDS auctions as was used for the broadband PCS auctions would ignore these differences and would disserve the policy goals intended to be promoted by the small business bidding benefits.

[2/] See also NYNEX Comments, at 8-9.

The Wireless Cable Association International, Inc. (WCAI), which has played such a constructive role in suggesting refinements in the provisions of the Report and Order, has, in the instance of this one issue, gone off course.

First, WCAI has misstated our position. We did not, as asserted by WCAI (Opposition at 4), urge the adoption of the general Small Business Administration (SBA) standard of $6 million in total assets and $2 million in gross revenues. We agree that this formulation has limitations (as the SBA itself has conceded) and do not urge its adoption. We believe that a substantially higher annual revenue figure would be more suitable, perhaps up to $8 or $10 million.

Second, WCAI (Opposition at 5) has itself suggested the appropriate approach -- that the Commission properly "consider the characteristics and capital requirements of each service." That is all we ask. We submit that this approach clearly disqualifies use of the $40 million revenue benchmark used in broadband PCS auctions.

Third, the following figures demonstrate that the capital infrastructure costs of MDS[3/] are a fraction of the capital costs for broadband PCS

[3/] See Attachment A.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service	)	MM Docket No. 94-131
	)	DOCKET FILE COPY ORIGINAL
and	)	
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding	)	PP Docket No. 93-253

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Pacific Telesis Enterprise Group and Cross Country Wireless Inc. ("PTE and Cross Country") hereby reply to oppositions to its Petition for Reconsideration and Clarification, filed on August 16 with respect to the Report and Order in the above-captioned proceedings ("Report and Order"). PTE and Cross Country generally support the Report and Order's fair and balanced resolution of numerous issues relating to the Multipoint Distribution Service ("MDS")[1/] and the Instructional Television Fixed Service ("ITFS"). The positions they urged on reconsideration are to fine-tune the Report and Order to further improve the effectuation of its objectives.

[1/] For purposes of this pleading, "MDS" refers to both single channel MDS stations and multichannel multipoint distribution service stations.

The areas of consensus support for the Commission's Report and Order are substantial and go to the core of the policies at issue in these proceedings. It is important also to note the substantial agreement among the filers on those few issues where there is disagreement with the Commission, e.g., opposition to the right-of-first-refusal requirement and support of the right of ITFS licensees/excess capacity lessees to enter into leases that are binding on assignees, to name two issues.[2/] While there are differences between the Commission and the affected industries and within the affected industries, the remarkable fact is that there is strong consensus that the Report and Order is on the right track. It generally establishes a proper framework for wireless cable as it moves into a new era of enhanced service (both entertainment and educational), increased competitiveness and technological sophistication.

The single issue that PTE and Cross Country here address is their proposal, supported by A/B Financial, Inc., for revising the definition of small businesses to take into account the dramatic difference between the capital infrastructure costs for the MDS and broadband PCS services. Use of the same $40 million annual revenue test for the MDS auctions as was used for the broadband PCS auctions would ignore these differences and would disserve the policy goals intended to be promoted by the small business bidding benefits.

[2/] See also NYNEX Comments, at 8-9.

The Wireless Cable Association International, Inc. (WCAI), which has played such a constructive role in suggesting refinements in the provisions of the Report and Order, has, in the instance of this one issue, gone off course.

First, WCAI has misstated our position. We did not, as asserted by WCAI (Opposition at 4), urge the adoption of the general Small Business Administration (SBA) standard of $6 million in total assets and $2 million in gross revenues. We agree that this formulation has limitations (as the SBA itself has conceded) and do not urge its adoption. We believe that a substantially higher annual revenue figure would be more suitable, perhaps up to $8 or $10 million.

Second, WCAI (Opposition at 5) has itself suggested the appropriate approach -- that the Commission properly "consider the characteristics and capital requirements of each service." That is all we ask. We submit that this approach clearly disqualifies use of the $40 million revenue benchmark used in broadband PCS auctions.

Third, the following figures demonstrate that the capital infrastructure costs of MDS[3/] are a fraction of the capital costs for broadband PCS:

[3/] See Attachment A.

PCS-Broadband	$15.00-30.00[4/]	$10-200 million
MDS - Small market	$3.75	$0.75 million
MDS - Med market	$1.23	$1.1 million
MDS - Los Angeles	$1.30	$13.0 million

Accordingly, the revenues test for MDS small business bidders should be far smaller than the present $40 million.

Fourth, the $40 million standard would result in all current wireless cable operators, except us, qualifying for small business status and the very substantial bidding advantages it would confer. Such a broadly drafted rule would completely undercut the purpose of the designated entity policy, because the small bidder would receive no greater bidding advantages than all but one other industry participant. If virtually all bidders are given a "preference," the smaller businesses with which Congress was properly concerned will have no relative advantage and the intent of Section 309(j) will have been frustrated.

Fifth, WCAI provides only one indication of the basis for its concern about a more realistic benchmark -- i.e., "adoption of the SBA definition would be a field day for the unscrupulous" (Opposition at 4). PTE and Cross Country take second place to no one in their concern about insincere bidders, and its Petition suggested several measures for

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[4/] These are analysts' estimates as reported in the *Wall Street Journal* by Gautam Naik and Daniel Pearl on March 4, 1995, Pacific Bell Mobile Services has estimated $21.00/pop for these costs.

dealing with this threat. But if that is the target at which WCAI is aiming, there are more effective ways to deal with the problem.[5] Moreover, the force of its argument leads not to retention of the $40 million benchmark but, instead, to the conclusion that there should be no small business policy. Its argument simply does not support a policy of granting the small-business benefits to almost every bidder.

Sixth, WCAI also argues that the $40 million revenue benchmark was used for narrowband PCS, whose capital requirements, it contends, are more comparable to MDS.[6] That may be true for some of the smaller narrowband PCS awards but certainly not for the larger (e.g., national) licenses. The Commission found as much when it adopted size standards for narrowband PCS. Although it found that some BTA systems could be built for amounts that we agree could be compared to MDS system build-out, the Commission also estimated that the costs of building systems for the larger narrowband PCS

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[5] The Commission has already taken some of those steps in connection with the IVDS auctions and those steps have had a salutary effect in suppressing abuses in subsequent auctions.

[6] Using WCAI's own approach that the qualifying criterion for small businesses should depend on the capital requirements of the service in question, one would conclude that the Commission erred in applying the $40 million revenue benchmark to a range of PCS licenses -- narrowband and broadband of varying geographic scope -- whose capital requirements were hugely disparate. But that is not a sound basis for adopting the $40 million benchmark willy-nilly in the case of MDS spectrum with low capital requirements.

licenses could exceed $14 million.[7] Moreover, in narrowband PCS only a fraction of bidders qualified for designated entity status; in contrast, under the current MDS auction benchmark, the exception would virtually swallow the rule.

Seventh, the Commission correctly recognized the applicability of the proportionality principle in connection with specialized mobile radio ("SMR") auctions. In its decision two weeks ago establishing small-business SMR preferences, the Commission stated that it "would take into account the capital requirements and other characteristics of each proposed service in establishing the appropriate threshold."[8] Under this analysis, the Commission found that "a $40 million definition is unwarranted, because build-out costs are likely to be much lower than those for broadband PCS and regional narrowband PCS."[9] Accordingly, the Commission utilized a tiered system of preferences for small businesses

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[7] See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Third Report and Order, 9 F.C.C. Rcd. 2941, 2969 n.40 (1994) (estimating that narrowband BTA systems could be built for $50,000, while MTA systems could cost $1.35 million each, regional narrowband facilities would cost $3.5 million each, and nationwide systems would cost some $14.2 million each).

[8] Amendment of Parts 2 and 90 of the Commission's Rules to Provide For the Use of 200 Channels Outside the Designated Filings Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Second Order on Reconsideration and Seventh Report and Order, FCC 95-395, slip op. at ¶ 141 (PP Docket 89-553, Sept. 14, 1995).

[9] Id. at ¶ 153.

with average gross revenues of between $3 million and $15 million.[10] This is the approach that the Commission should have used for narrowband PCS, where there was a considerable spread between high and low infracture costs. The fact that in the SMR proceeding the Commission moved away from the approach it used for narrowband PCS shows that the latter should not be used to justify the $40 million revenue benchmark for MDS.

WHEREFORE, the Commission should act on reconsideration as requested herein and in our earlier submissions.

Respectfully submitted,

CROSS COUNTRY WIRELESS INC. and
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September 28, 1995

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[10] Id. at ¶ 153.

MMDS Infrastructure Costs by Market Size

System Components	Large Cost/pop	Medium Cost/pop	Small Cost/Pop
Receiving Equipment	$0.02	$0.20	$0.65
*Routing Equipment	0.25	0.36	0.88
Encoding Equipment	0.85	-	-
Switching Equipment	0.01	-	-
Software, Servers	0.10	0.06	0.15
Towers, Antennas, Racks etc.	0.04	0.19	0.83
Modulation Equipment	0.03	0.28	0.75
Site Acquisition/Preparation	0.02	0.14	0.50
Total Infrastructure Cost	$1.30	$1.23	$3.75
Channels	33	25	15

Large system - The figures represent Pacific Telesis' estimated costs for the Los Angles market, in a digital format, with 3.8 million line of sight homes, and an approximate 10 million population base.

Medium system - the figures represent estimates for a medium size market of between 200,000 to 300,000 line of sight hoı or from 500,000 to 1.3 million population, based on analog equipment costs. On average, we estimate a medium size syst will utilize 25 MMDS channels.

Small system - the figures represent estimates for a small size market of between 50K and 200K line of sight homes, or fro 100,000 to 500,000 population, based on known analog equipment costs. On average, we estimate a small market size sys will utilize 15 MMDS channels.

Notes:

Pop = potential subscribers and corresponds to population approximations mentioned above.

* Routing equipment includes components such as microwave transmitters, fiber routing, and transmitters.

<u>**Certificate of Service**</u>

I, Christopher M. Petite, a legal assistant at the law offices of Covington & Burling, do hereby certify that on this 28th day of September, 1995, a copy of the foregoing "REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION" was served by U.S. First Class Mail, postage prepaid, to the following:

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